

MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM (MEPDES) PERMIT

MAINE WASTE DISCHARGE LICENSE

PROPOSED DRAFT

FACT SHEET

GENERAL PERMIT NUMBER: #MER043000

**GENERAL PERMIT FOR DISCHARGE OF STORMWATER FROM MAINE
DEPARTMENT OF TRANSPORTATION AND MAINE TURNPIKE AUTHORITY
MUNICIPAL SEPARATE STORM SEWER SYSTEMS**

issued by

**MAINE DEPARTMENT OF
ENVIRONMENTAL PROTECTION (DEP)**

AREA OF COVERAGE: Includes all those areas within a defined Urbanized Area within the State of Maine.

DEPARTMENT CONTACT:

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1. APPLICATION SUMMARY

On May 9, 2008, the Maine Department of Environmental Protection (“Department”) provided public notice of its intent to renew the *General Permit for Discharge of Stormwater from Maine Department of Transportation (“Maine DOT”) and Maine Turnpike Authority (“MTA”) Municipal Separate Storm Sewer Systems* General Permit # MER043000 to waters of the State of Maine other than groundwater. This general permit was issued on June 3, 2003, and is scheduled to expire on June 2, 2008. Pursuant to *General Permits for Certain Wastewater Discharges*, 06-096 CMR 529 (last amended June 27, 2007), “prior to expiration of a general permit, the Department shall make a determination if it is to be renewed, and, if so, will commence renewal proceedings. If the general permit is not renewed, it shall remain in force until the Department takes final action on the renewal.” This draft MEPDES general permit establishes requirements and standards for these discharges.

2. AUTHORITY AND REGULATORY SUMMARY

A permit is required for the direct and indirect discharge of pollutants to waters of the State pursuant to *Waste discharges licenses*, 38 M.R.S.A. § 413. Pursuant to 06-096 CMR 529, the Department may issue a general permit for a category of point sources located within the same geographic area whose discharges warrant similar pollution control measures. The similarity of discharges from MaineDOT/MTA Municipal Separate Storm Sewer Systems prompted the Department to initiate development of a general permit in 2003 for stormwater discharges. The Department maintains that the similarity of the discharges from permitted facilities lends itself to the renewal of the 6/3/03 General Permit.

A violation of a condition or requirement of a general permit constitutes a violation of the State’s water quality laws, and subjects the discharger to penalties under *Organization and powers*, 38 M.R.S.A. § 349. Nothing in this general permit is intended to limit the Department’s authority under the waste discharge and water classification statutes or rules. This general permit does not affect requirements under other applicable Maine statutes and Department rules.

3. PERMIT SUMMARY

The “Parts” referred to below refer to the parts of the general permit.

Part I -- General permit coverage: This general permit authorizes the discharges of stormwater from or associated with a regulated small municipal separate storm sewer system (“MS4”) to an MS4 or waters of the State other than groundwater.

The Department proposes to issue this general permit effective July 1, 2008, and authorization to discharge under this general permit expires at midnight June 30, 2013. The Department intends subsequent re-issuance of this Municipal Separate Storm Sewer System General Permit. This general permit replaces Maine’s General Permit for the Discharge of Stormwater from Maine Department of Transportation and Maine Turnpike Authority Municipal Separate Storm Sewer Systems issued June 3, 2003.

Part II -- Definitions

Definitions added to this Draft General Permit or substantially changed from the 2003 MS4 General Permit include:

Commissioner. “Commissioner” means the Commissioner of the Maine Department of Environmental Protection

Compensation Fee Utilization Plan. A “Compensation Fee Utilization Plan” means a plan that specifies how funds received as a fee payment will be allocated to reduce the impact of stormwater pollution to an impaired waterbody.

Outfall. “Outfall” means the point source where the MS4 discharges from a pipe, ditch or other discrete conveyance directly to the waters of the State other than groundwater, or to another MS4.

Regulated Small MS4. “Regulated Small MS4” means any Small MS4 authorized by this general permit or the general permits for the discharge of stormwater from Maine Department of Transportation and Maine Turnpike Authority small MS4s or State or Federally owned or operated small MS4s including all those located partially or entirely within an Urbanized Area (UA).

Stormwater Pollution Prevention Plan (“SWPPP”). Stormwater Pollution Prevention Plan (“SWPPP”) means a written plan developed and implemented by each municipal industrial facility to reduce or eliminate pollutants as described in this general permit.

Urban Impaired Stream. “Urban Impaired Stream” means a stream that fails to meet water quality standards because of effects of stormwater runoff from developed land. Urban impaired streams are those streams identified and listed in Chapter 502, Appendix B of the Department of Environmental Protection Rules as of the issuance of this general permit.

Part III – Procedure

NOI requirements. Any regulated small MS4 that initiates, creates, originates or maintains a discharge described in Part I of this general permit and that wishes to obtain coverage under this permit shall file with the Department an NOI that meets the requirements of this general permit no later than July 7, 2008. By submitting a signed NOI, the applicant agrees to comply with the terms and conditions of this General Permit.

Obtaining Authorization.

- 1. Interim Coverage.** Upon the Department’s receipt of the NOI, the applicant is authorized to discharge on an interim basis for up to 180 days from the effective date of this permit. The applicant shall meet the standards contained in this General Permit during the interim period. Interim coverage will terminate earlier than 180 days if a complete Stormwater Program Management Plan has been submitted by the applicant, reviewed by the Department, and coverage under this permit is either granted or denied by the Department. The applicant is authorized to

discharge under the terms and conditions of this permit when coverage under this permit is granted. The Department shall provide written notice of coverage or denial of the NOI.

2. Public Notice and Comment.

- a. Applicant Public Notice and Comment.** Applicants are required to publish a public notice that the NOI is being filed with the Department. The notice must be published within 30 days prior to the NOI being sent to the Department. The notice should be published in the legal advertisement section of a daily or weekly newspaper having general circulation in the area where the discharges authorized by this permit will occur. Applicants are required to provide a letter of notice to regulated small MS4s into which the State or Federal facility discharges, and also to persons who have requested to be notified of the NOI application, provided that the Department has provided the mailing addresses of such interested persons to the respective applicants. If the public notice is not published at the proper time, or if the NOI is returned because it is incomplete, the Department may require that notice be published a second time.
- b. Department Public Notice and Comment.** The Department will provide a public notice and opportunity for comment on the contents of the submitted NOIs and Stormwater Program Management Plans by making information available on the internet.

The public comment period is a minimum of 20 days. Based on a review of the NOI or other information, the Department may extend the public comment period, require additional information or may deny coverage under this permit and require submission of an application for an individual or alternative MPDES permit.

The Department will provide a public notice and opportunity for comment on the contents of the submitted NOIs and Stormwater Program Management Plans by making information available on the internet.

Part IV – Requirements

Stormwater program management plan. The permittee shall develop, implement, and enforce a Stormwater Program Management Plan (“Plan”) implementing six minimum control measures, which are designed to reduce the discharge of pollutants within the UA, from its regulated small MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. The Plan and all Minimum Control Measures must be substantially implemented by June 30, 2013.

Amended plan. The Plan must be amended if the Department or the permittee determines that:

- a.** The actions required by the Plan fail to ensure or adequately protect against pollution of the waters of the State other than groundwater;
- b.** The Plan does not prevent the potential for a significant contribution of pollutants to waters of the State other than groundwater;
- c.** The Plan does not meet one or more requirements of this general permit; or

- d. New information results in a shift in the Plan's priorities.

Minimum control measures. For each Minimum Control Measure, the permittee shall: define appropriate BMPs; designate a person(s) responsible for each BMP; define a time line for implementation of each BMP; and define measurable goals for each BMP. The Minimum Control Measures to be included in the Plan are as follows.

1. **Public education and outreach on stormwater impacts.**
2. **Public involvement and participation**
3. **Illicit discharge detection and elimination.**
4. **Construction site stormwater runoff control.***
5. **Post-construction stormwater management in new development and redevelopment.**
6. **Pollution prevention/good housekeeping for municipal operations.**

*The Construction site stormwater runoff control Minimum Control Measure requirement in the MaineDOT/MTA MS4 General Permit differs from the requirements in the Municipal and State or Federal MS4 General Permits. Both MaineDOT and MTA have agreed to the following based on an existing program.

Each permittee shall develop, implement, and enforce a program, or modify an existing program, to reduce pollutants in any stormwater runoff to the regulated small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of stormwater discharges from construction activity disturbing less than one acre must be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. The program must include, but not be limited to, the development and implementation of:

a. Required Strategies.

- i. Implement a program of temporary erosion and sedimentation control utilizing best management practices described in the MaineDOT's Best Management Practices for Erosion and Sedimentation Control (hereinafter the MaineDOT BMP Manual) as updated from time to time.
- ii. Implement procedures for ensuring erosion and sedimentation control plans are written for all earth disturbance activities regardless of the area disturbed.
- iii. Ensure trained and qualified personnel oversee the implementation of the erosion and sedimentation control plan.
- iv. Implement site inspections procedures to ensure projects are in compliance with the MCGP and Chapter 500, Stormwater Management. In watersheds of Urban Impaired Streams, and in the permittee's highest priority watershed, inspect the construction activity at least three times with one inspection at project completion to ensure that all post construction BMPs were properly installed, and that final stabilization of the site has been completed. All construction inspections shall be

properly documented. For other watersheds, inspect the construction activity a minimum of twice, with one inspection at project completion to ensure that all post construction BMPs were properly installed, and that final stabilization of the site has been completed.

- v. Document within the annual report every construction activity regardless of area disturbed within the UA.

Reporting and record keeping requirements. By September 15, 2009, and annually thereafter by September 15, the permittee shall submit a report for the Department's review and approval.

Part V – Standard Conditions

Removed substances. Solids, sludges, filter backwash or other pollutants removed or resulting from the treatment of wastewaters shall be disposed of in a manner approved by the Department.

Other applicable conditions. The conditions in 06-096 CMR 523(2) also apply to discharges pursuant to this general permit and are incorporated herein as if fully set forth. These conditions address areas such as: duty to comply; need to reduce or halt activity not a defense; duty to mitigate; permit actions; property rights; duty to provide information; and inspection and entry.

Monitoring requirement. The Department may require monitoring of an individual discharge as may be reasonably necessary in order to characterize the nature, volume or other attributes of that discharge or its sources.

Other information. When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Department, he or she shall promptly submit such facts or information.-

Endangered species. Pursuant to 12 M.R.S.A. § 12806, A state agency or municipal government shall not permit, license, fund or carry out projects that will:

1. Significantly alter the habitat identified under section 12804 subsection 2 of any species designated as threatened or endangered under this subchapter; or
2. Violate protection guidelines set forth in section 12804, subsection 3.

Individual permit or alternative general permit. When an individual permit is issued to a discharger otherwise subject to this permit, or the discharger is authorized to discharge under an alternative general permit, the applicability of this permit to the individual permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual permit is denied to an operator otherwise subject to this permit, or the

operator is denied for coverage under an alternative general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Commissioner.

4. PERMITTEE CONSIDERATIONS

The operator of a small MS4 that does not prohibit or control discharges into its system essentially accepts “title” for those discharges. By providing free and open access to the MS4s that convey discharges to the waters of the State, the municipal storm sewer system may enable water quality impairments by third parties. Operators of a Regulated Small MS4 should not passively receive and discharge pollutants from third parties. For this reason, federal rules provide that an MS4 operator may petition for a determination that any discharge into an MS4 require a separate NPDES permit. Regulated Small MS4s have the option to refuse to accept title to polluted discharges from third parties as per 40 C.F.R. § 122.26(f). Given budgetary concerns and the potentially significant contributions to water quality impairments caused by unregulated third parties, many regulated small MS4s may have a difficult time meeting water quality standards on their own. Moreover, such an approach may, in many cases, be the only viable solution to the urban impaired stream problem since the most cost-effective BMPs generally require treatment at the source, rather than as part of the MS4 collection and discharge system.

5. HISTORY

In 1987, Congress amended the Clean Water Act and added Section 402(p). This section requires a comprehensive program for addressing stormwater discharges. Section 402(p)(1) requires the U.S. Environmental Protection Agency (EPA), or delegated states, to issue permits to the following types of storm water discharges:

1. Discharge subject to a NPDES permit before February 4, 1987;
2. Discharge associated with industrial activity, including construction activities that disturb 5 or more acres of land;¹
3. Discharge from a municipal separate storm sewer system serving a population of 250,000 or more;
4. Discharge from a municipal separate storm sewer system serving a population of 100,000 or more;
5. Discharge from a municipal separate storm sewer system serving a population of 50,000 with an over all population density of 1,000 people per square mile; or
6. A discharge that an NPDES permitting authority determines to be contributing to a violation of a water quality standard or a significant contributor of pollutants the waters of the United States.

In November 1999, the State applied to EPA for authorization to administer the NPDES program in Maine. On January 12, 2001, the EPA granted authorization to the Department to administer the NPDES program in most areas of the State.

¹ EPA is also required to regulate discharges from construction activities that disturb less than 5 acres if the activity is part of a “common plan of development” that collectively will result in 5 or more acres of land disturbance .

6. AREA OF COVERAGE

This general permit applies to MaineDOT/MTA facilities located in or partially within an Urbanized Area. "Urbanized Area" or "UA" means the areas of the State of Maine so defined by the latest decennial census (2000) by the U.S. Bureau of the Census. The following municipalities are located within or partially within an Urbanized Area: Auburn, Bangor, Berwick, Biddeford, Brewer, Cape Elizabeth, Cumberland, Eliot, Falmouth Freeport, Gorham, Hampden, Kittery, Lewiston, Milford, Old Orchard Beach, Old Town, Orono, Portland, Sabattus, Saco, Scarborough, South Berwick, South Portland, Veazie, Westbrook, Windham, Yarmouth.

7. PUBLIC COMMENTS

The 30 day public comment period is from May 9, 2008, to June 9, 2008, interested persons may submit written comments on the draft general permit as part of the administrative record to the Maine DEP, at the address given below. All written comments via email or U.S mail received no later than **5:00 p.m. June 9, 2008** will be considered. The general permit shall be effective on the date specified in the final general permit issued by the Commissioner of the Maine DEP and will expire five years after.

8. PUBLIC MEETING INFORMATION

Maine DEP does not intend to hold a formal public meeting on the reissuance of this general permit due to the fact that there have been extensive stakeholder meetings and participation in the development of this permit during the previous 12 months.

9. PUBLIC HEARING INFORMATION

No public hearing has been scheduled. Persons wishing to request a public hearing may do so in writing during the comment period. The Department will notify anyone commenting if a public hearing is scheduled. Such a hearing would provide interested parties with the opportunity to provide written and/or oral comments for the official record.

10. DEPARTMENT CONTACTS

Additional information concerning the draft permit may be obtained between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday excluding holidays from: David Ladd; Maine Department of Environmental Protection; 17 State House Station; Augusta, Maine 04333; telephone: 207-287-5404. E-mail: david.ladd@maine.gov a copy of the Draft general permit and Fact Sheet can be viewed on the Department's web site. <http://www.maine.gov/dep/blwq/comment.htm>

11. RESPONSE TO COMMENTS

Reserved until the end of the 30-day comment period.